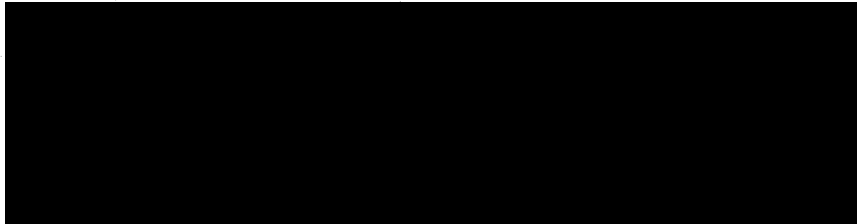


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U.S. Citizenship  
and Immigration  
Services



**BY**

**DEC 29 2004**

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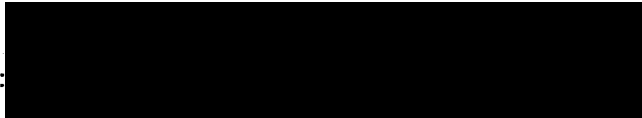
Office: CALIFORNIA SERVICE CENTER

Date:

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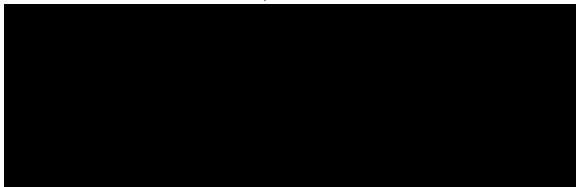
Petitioner:

Beneficiary:



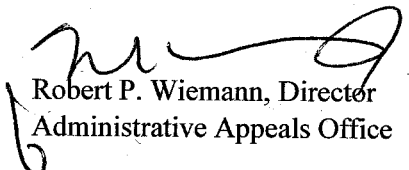
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to  
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is an international company that is engaged in international hotel management. It seeks to employ the beneficiary as its director of finance and business support in its Guam subsidiary. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner re-submits a lengthy and comprehensive position description for the beneficiary's position. Counsel asserts that the beneficiary manages a department and a function.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. See 8 C.F.R. § 204.5(j)(5).

The issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a managerial capacity for the United States entity. The petitioner does not request consideration of the beneficiary's position in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

In documentation submitted with the January 29, 2003 petition, the petitioner provided a comprehensive description of the beneficiary's duties for the petitioner. In a response to a request for evidence, the petitioner provided its organizational chart and brief job descriptions and employment data for the beneficiary's subordinates.

The director determined that the beneficiary's subordinates were not managerial employees because the subordinate employees did not supervise professional employees. The director inexplicably concluded that the beneficiary was a first-line supervisor of non-professional employees. The director also concluded without explanation that the beneficiary was not a functional manager because the beneficiary was involved in the performance of the petitioner's routine operational activities rather than managing a function.

On appeal, the petitioner questions the director's conclusion that the beneficiary is a first-line supervisor of non-professional employees. The petitioner reiterates that the beneficiary initiates, plans, and coordinates all financial affairs of the hotel and that other managers and professionals carry out the tasks associated with the

budget, financial, and audit functions. The petitioner submits additional documentation in support of this claim.

The AAO finds that the petitioner has provided sufficient evidence to establish that the beneficiary manages a function within the petitioner's organization and that the nature of the function is essential. The petitioner also has provided a comprehensive description of the beneficiary's duties and evidence that the beneficiary's subordinates carry out the tasks associated with the function. The director's decision will be withdrawn.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.